

**Revised**

## **AGENDA**

**MILWAUKIE CITY COUNCIL  
OCTOBER 4, 2005**

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**1967<sup>TH</sup> MEETING**

### **REGULAR SESSION – 7:00 p.m.**

- I. CALL TO ORDER**  
Pledge of Allegiance
- 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
  - A. National Fire Prevention Week -- Proclamation**
  - B. Crime Prevention Month -- Proclamation**
  - C. Appointed Advisory Committee Interview – Public Safety Advisory Committee, Island Station Representative**
- 3. CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
  - A. City Council Regular Session Minutes of September 6, 2005**
  - B. 42<sup>nd</sup> Avenue Sidewalk Project Contract Award**
  - C. Intergovernmental Agreement with Clackamas County Service District for Clearwater**
- 4. AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
- 5. PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

**None scheduled.**
- 6. OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*
  - A. North Main Sewer Extension Transfer of Funds – Resolution (Kelly Somers/Paul Shirey)**

## **OTHER BUSINESS, continued**

### **B. Council Reports**

#### **7. INFORMATION**

#### **8. ADJOURNMENT**

#### **Public Information**

- Executive Session: The Milwaukie City Council may go into Executive Session immediately following adjournment at pursuant to ORS 192.660(2).

All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

## ***PROCLAMATION***

**WHEREAS**, every year in America destructive fires result in over 4,000 fatalities, tens of thousands of burn injuries and more than \$9.7 billion in direct property loss; and

**WHEREAS**, fire departments in the United States respond to a structure fire every 51 seconds somewhere in this country; and

**WHEREAS**, the majority of fire fatalities, injuries and property loss occur in residential properties; and

**WHEREAS**, smoke detectors and automatic sprinkler systems greatly reduce the risk of dying in a home fire, but the best defense against fires is to stop them before they start by practicing fire prevention;

**NOW, THEREFORE**, I, James Bernard, Mayor of the City of Milwaukie, Oregon, do hereby proclaim that the week of October 9 - 15, 2005, is designated as

## **FIRE PREVENTION WEEK**

and urge all citizens, government agencies, public and private institutions and businesses to increase their participation in our community's fire and burn injury prevention efforts and thereby good citizenship.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 4th day of October 2005.

ATTEST:

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Pat DuVal,  
City Recorder

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James Bernard, Mayor  
City of Milwaukie

## **PROCLAMATION**

**WHEREAS**, the vitality of our State depends on how safe we keep our homes, neighborhoods, schools, workplaces, and communities; and

**WHEREAS**, crime and fear of crime destroy our trust in others and in civic institutions, threatening the community's health prosperity, and quality of life; and

**WHEREAS**, people of all ages must be made aware of what they can do to prevent themselves and their families, neighbors, and co-workers from being harmed by crime; and

**WHEREAS**, the personal injury, financial loss, and community deterioration resulting from crime are intolerable and require investment from the whole community; and

**WHEREAS**, crime prevention initiatives must include self-protection and security, but they must go beyond these to promote collaborative efforts to make neighborhoods safer for all ages and to develop positive opportunities for young people; and

**WHEREAS**, effective crime prevention programs excel because of partnerships among law enforcement, other government agencies, civic groups schools, faith communities, businesses, and individuals as they help to nurture communal responsibility and instill pride.

**NOW, THEREFORE**, be it resolved that I, James Bernard, Mayor of the City of Milwaukie, Oregon, do hereby proclaim the month of October as

## ***CRIME PREVENTION MONTH***

In the City of Milwaukie and ask all our citizens, government agencies, public and private institutions, and businesses to invest in the power of prevention and work together to make Milwaukie a safer, stronger, and a more caring community.

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James Bernard, Mayor

ATTEST:

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Pat DuVal, City Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
SEPTEMBER 6, 2005**

**CALL TO ORDER**

**Mayor Bernard** called the 1965<sup>th</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Deborah Barnes, Council President    Susan Stone  
Carlotta Collette

Staff present:

Mike Swanson, City Manager	JoAnn Herrigel, Community Services Director
Larry Kanzler, Police Chief	Kenny Asher, Community Development/ Public Works Director

**PLEDGE OF ALLEGIANCE**

**Mr. Swanson** announced that he had excused the City Attorney from the meeting pursuant to Resolution 9-2003 given the lightness of the schedule.

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**Mayor Bernard** read a proclamation naming the week of September 17 as *Constitution Week* in the City of Milwaukie.

**CONSENT AGENDA**

It was moved by Councilor Collette and seconded by Councilor Barnes to approve the Consent Agenda that consisted of the following:

- A. City Council Work Session and Regular Session Minutes of August 2, 2005;
- B. Pulled for discussion by Councilor Stone.
- C. Resolution No. 40-2005: A Resolution of the City Council of the City of Milwaukie, Oregon, adopting the fiscal year 2005/2006 (Year Sixteen) annual waste reduction plan and authorizing the City Manager to sign an IGA with Metro.
- D. Resolution No. 41-2005: A Resolution of the City Council of the City of Milwaukie, Oregon, setting fees for services; classifying the fees imposed by this resolution as not subject to Article XI, Section 11B of the Oregon Constitution.

Motion passed unanimously among the members present. [4:0]

## AUDIENCE PARTICIPATION

- **Ed Zumwalt, 10888 SE 29<sup>th</sup> Avenue, Milwaukie**

**Mr. Zumwalt** read his comments into the record.

“On 7/19, our state representative to the legislature stated before this body that the people of Milwaukie want light rail and want it right now, not 10 years from now. Twice over the last couple of months, one of you predicted that if an election were held tomorrow light rail would win handily. Possibly, taking into consideration the price of gas.

That isn’t the point—public statements like that without any solid proof are nothing but a way to impose one’s will on others. A little history: in ‘98 when that state representative was mayor, Metro pushed to have every municipality pass a resolution to put light rail on the ballot, giving it more credibility. There was strong resistance, but the pro-rail forces found a way around it.

We anti-rail people were characterized as the loud, raucous minority stifling the desires of the great silent majority who were theoretically strongly in favor of rail. A local consultant, Market Decisions Corporation, was hired to make a study to prove the point: their study showed Milwaukie favoring light rail 54% to 38%. When the actual vote was taken, rail went down to defeat 62% to 38% in Milwaukie, and 55% to 45% in Clackamas County. So much for the silent majority.

Another tool used to quiet the restless natives was to draw up a list of 21 points softening negative impacts on the environment and neighborhoods, among other things. One states that the project would work to protect existing neighborhoods from all impacts of light rail. You should all have a copy of that resolution, #22-1998. It would open some eyes.

I am personally against light rail because of its huge cost ratio per passenger mile and its inflexibility—it won’t do what they claim it will do and Tri-Met knows it. The General Accounting Office published a report in September 2001 that was decidedly against light rail for many reasons, yet our government continues to throw money at a flawed system. The left hand and the right hand, never the twain shall meet.

The ironic part of this is that neither the ‘96 or the ‘98 elections were about light rail at all, but about livability and the control of density. In 1995, Don Morissette, former Metro councilor, wrote Expanding Horizons—Managing the Future of Growth. Fascinating—To paraphrase, “If density is to be embraced by our region’s citizens, it cannot be forced upon them... The public cannot be left feeling they had the wool pulled over their eyes... By and large, opinions and preferences which produce opposition to higher density and light rail represent a deeply entrenched fear of the impact of high-density housing on neighborhood integrity... The populace must be treated fairly and educated over time to the advantages of our plans.” (pg. 58 and 59). You should all have a copy of this because of its comprehensive analysis. I am sure Metro has a whole warehouse stuffed with unopened cases of these; because it’s obvious, no one there has ever read it.

Mayor Bernard, at the July 19 meeting you observed, regarding the Kellogg Lake transit site, that council had stuck its neck out, and that former councils have been recalled for doing the same. I'm glad you had the grace to say that, and I think it's fitting that you all feel the sword hanging over your heads.

However, recall does no good—It just gives the town a bad name. We're right back where we were 7 years ago.

What must happen is a constant dialogue—between council and citizens. You must listen.

I am trying to handle this tactfully, but this is very touchy stuff, and I'm trying not to be confrontational. When candidates, anywhere, are elected they regard the electorate as the most intelligent people on the planet because they did, in fact, realize they were best for the job. Then, within 6 months they act like that same electorate is dumb as dirt and won't listen to anything they say.

For some reason, in that brief six months, a disconnect occurs in some elected officials. What is it? Constant contact with other high officials and businessmen—A sort of groupthink? Feelings that they have the “big picture” and the peasants just don't understand? I'm chiding a little bit, but I'm very serious. We elect you, we must be heard. As difficult as it is, ambition and ego must be put aside for the benefit of the city as a whole.

Milwaukie is again going through the constant battle between business and industry on the one side and the advocates of density control and livability on the other. This conflict has raged since the beginning of time in every city of any size everywhere in the world regarding density and transportation.

The other day I was reading “The Rise and Fall of the Roman Empire” again when I came across a chapter that riveted me with its tale of the struggle between interests and classes. It reminded me so much of our problems. It seems a sort of controversial “Mass Transit” was developed that consisted of building bigger and bigger chariots, pulled by more and more horses, which necessitated more and more people shoveling horse manure.

Our neighborhood has supported and participated in the planning processes of North Main Village, The McLoughlin Project, The Gramor project, Safeway at 42nd and many others. We, too, want a vibrant city, one that we can be proud of. Yet, you must realize that every bit of development in the area affects our neighborhood.

We have opposed one project, the ill-advised Kellogg Lake transit center, and we are called Nimby's. People who live a 20-buck cab ride from the action call us Nimby's. — What gall!

When the recent Wal-Mart flap lit up the stage, the hue and cry from council was deafening. “Those neighborhoods can't stand all that traffic!” Well, what do you know? One of the most flagrant instances of Nimbyism I've ever seen or heard. None of you worried about traffic through the residential sections of our neighborhood from the Kellogg Transit Center, although it was pointed out repeatedly. I guess it just depends on whose ox is being gored.

All because of light rail, a system that probably won't be here for 15-20 years. Take a look at the new transportation bill that provides for light rail on the Interstate Bridge, factor in the cost/hour/passenger numbers, and see just about what chance you have of getting light rail.

ZIP.

Concentrate your energies on moving the transit center back to Southgate where we all at one time agreed that it belongs—before the North Industrial people flexed their muscles.

Returning the center to Southgate would free up a great deal of parking needed for our new development, and much sooner than the Kellogg site.

So, shoot me.”

- **Dion Shepard, 2136 SE Lake Road, Milwaukie**

**Ms. Shepard** attended the funeral for Marie Watkins. Many people in the community did not know her; she did not live here very long. In the short time she did live here, she came to love Milwaukie, to appreciate its natural resources, and the wildlife she enjoyed on a daily basis. When attending a service, one thought of one's own mortality and thought about what happened in the past, where you were in the present, and where you would be in the future. She realized it had been almost a year since the City Council voted 3 – 2 to recommend moving the transit center to Kellogg Lake. She read that the recommendation was to further study the site. That now seemed to translate to an environmental impact statement (EIS) that was estimated to cost \$4.3 million. She understood the funding for the study was a problem and that it was just now being scheduled for 2006. Even though the study had not started, for many people in the community it was a fore drawn conclusion that the transit center was going to move to Kellogg Lake. That concerned her. She wanted to be assured that the study would be conducted fairly and objectively. She did not know who would be involved with the study – whether it would be TriMet and Metro or an outside entity. She wanted to make sure as a citizen that the \$4.3 million was spent well and that the study was objective.

**Mayor Bernard** added the \$4.3 million was not just for the transit center. It was the whole line.

- **Ray Bryan, 11416 SE 27<sup>th</sup> Avenue, Milwaukie**

**Mr. Bryan** read his comments into the record.

“I hope you know I really appreciate each of you, your time, your energy, and the sacrifices you make for our city. I would like to respond to the report by TriMet and the testimony of others on July 19th. The following council meeting was Neighbor Night Out, the next meeting you had two public hearings and I was on vacation. So this is really the first chance I have had to speak.

First of all I am pleased to be able to report that the precarious intersection at River Road and McLoughlin Blvd. will be fixed regardless of what happens at Kellogg Lake. After the July 19th meeting I decided to call ODOT, I spoke with a gentleman, Rick Keene about the McLoughlin-River Rd intersection. According to Mr. Keene the



intersection has been redesigned. Improvements include a new signal, improved bicycle and pedestrian access, and best of all North bound traffic on McLoughlin will stop when River Rd traffic enters McLoughlin. The project is funded and will happen in 2007 in conjunction with a repaving project.

So yet another of the reasons touted by the proponents of Kellogg Lake is not true. I don't know about you, but I find it very discouraging that we have been given so much bad information. First there was the math error. The working group, myself and other citizens at the open house and Planning Commission were told that there would be 1.4 million in extra costs to locate the transit center North of town. That steered them to Kellogg Lake. We were told the Kellogg Lake site would be quicker because the city owned the land, but oops a costly environmental impact statement needs to be done. Now we find out that ODOT has already designed and funded the rebuilding of the McLoughlin/River Rd. intersection.

What is true is that we all want the buses to layover somewhere besides our downtown. What is also true is that nobody wants to lose transit service and we won't lose service just because the busses are parked elsewhere.

I ask that each of you who made the difficult decision and voted for the Kellogg Lake location to step back, and ask yourself. Knowing what you know now is it really the best site?

I ask you also to separate phase one from phase two, because nobody knows when phase two will happen due to the competition for federal dollars. The most recent letter from Fred Hansen says TriMet will assess whether, when and how a phase one project will be done. This sounds like they are not even sure if it will happen. If we want a phase one project shouldn't it be economical and easy to do?

I still think phase one belongs at Southgate. TriMet owns the land, work on the park and ride has not yet started, and according to Phil Selinger it is still the official LPA.

My final comment I would like to direct not only to this fine council but also to that wonderful group of people involved with the Neighborhood Associations. I have read many of the emails coming from city and neighborhood folks regarding Wal-Mart. The concerns expressed by those who will be negatively impacted by a Wal-Mart at Tacoma are remarkably similar to those expressed by the residents in other neighborhoods that will be negatively impacted by a Kellogg Lake Transit Center and Parking Garage. The issues expressed by all of us are real; they include not only concerns about the livability of our neighborhoods, but also what is best for the future of downtown. I ask that all of us stand united and look out for each other and not support a project that will negatively impact any of Milwaukie's neighborhoods.

Milwaukie is on the move with out light rail, thanks to the hard work and vision by each of you, past councils, and our excellent staff, some who have moved on. We don't need light rail, if light rail happens let's use it to our advantage, protect our livability, and be prepared to deal with and pay for its negatives. In the mean time it would be a terrible waste to pave over Kellogg Lake green space just to have a place for a handful of buses to layover."

## **PUBLIC HEARING – None scheduled**

### **OTHER BUSINESS**

#### **A. Request for Transfer of Title to Property**

**Ms. Herrigel** requested that the City Council adopt a resolution authorizing the City Manager to sign a “Request for Transfer of Title to Property” for a piece of land currently under Kellogg Lake. She provided a map of the various properties in the vicinity.

The City and Corps of Engineers had been working on a feasibility study on increasing fish passage up Kellogg Creek from the Willamette River for several years. The options included modifying or perhaps removing the dam to return it to its original creek bed. One option might to revegetate a 50-foot buffer area.

Based on her discussions with the Planning Director regarding the zoning rules, Ms. Herrigel understood the water quality resource regulations would govern activities in that area. She did not believe the City would be able to build there without a variance, and it was unlikely one would be granted. She proposed that this area be maintained as a vegetated area. If and when the City went forward with the Kellogg Creek project, then she would recommend that the invasive materials be removed and that the area be replanted with natural vegetation. The cost of the property was \$4,456 to the County. \$2,700 of that was taxes, and the balance was for advertising, administrative expenses, and a litigation report, which the County would reimburse. The property was 5.25 acres.

**Councilor Stone** asked Ms. Herrigel why she was skeptical that a variance would be granted.

**Ms. Herrigel** replied these lands were protected by water quality regulations. A variance would be considered for something like a storm drain. Even someone owning property in this type of area could only build within the footprint of an existing structure. From what she had read of the water quality regulations, she did not believe a variance would be possible. It was the intent to revegetate and leave it as a natural area and not to build on it. If it remained a Lake, then the City would own property that was inundated.

**Councilor Stone** understood at one time it was not under water and asked who owned the property.

**Ms. Herrigel** had not gone back through all the history to determine the property owners. Assessor’s records indicated that four people co-owned the property, and she guessed that they owned it before it was inundated. Once it was inundated, the owners either moved away or passed away and the property was left languishing. The County just discovered that the taxes were not being paid. She actually brought the property to the County’s attention in the past two to three years during the Corps project. The County told her that the property was co-owned by those four people, and that they had not been able to locate any of them. That was when the County went through the process of putting it on its surplus property list.

**Councilor Stone** asked how much it would cost to revegetate the property.

**Ms. Herrigel** said the Corps would prepare a list of options along with cost estimates when it was done with its study. She thought the total project would cost about \$3

million with most of that going to the modification and removal of the dam. The cost of revegetation would be fairly minimal.

**Councilor Stone** asked what would happen if the City did nothing? What would happen with this piece of property? Would it be auctioned?

**Mr. Swanson** replied it appeared this property was in the Sheriff's auction, but no one bid on it. The title would basically revert to the County if the taxes were not made, and once it had gone through the process. The County had a policy that offered the property to the jurisdiction and give it first right of refusal. If the City did not exercise its option, the parcel would just become surplus property. He thought the County would try to sell it for back taxes.

**Councilor Stone** commented the County had not gotten taxes on it for years, so it was not missing anything.

**Mr. Swanson** replied the County had apparently not collected taxes for some years, and that was what triggered putting it in the Sheriff's auction. He discussed the process in the Heckmann property. The City was actively pursuing the whole issue of reclaiming Kellogg Creek. This proposed acquisition solved a great portion of the ownership problem and moved the City forward on the whole restoration issue.

**Councilor Stone** did not think the City would have to do that except the County tried to contact the owners and could not reach them.

**Mr. Swanson** replied the owners were out of it now.

**Councilor Stone** understood then it would be an agreement with the County to cooperate.

**Mr. Swanson** said the County could chose to sell the property to someone for \$4,000, and it might find a taker. The City would then have a problem if it undertook the restoration project. Procuring an easement from the property owner could well be more expensive than the \$4,000 it cost the City now to take title. This was a very good deal in terms of the creek restoration program.

**Councilor Stone** supported restoring things to their natural state, but the City was certainly not going down that road yet. She heard a lot of concerns from the people living on the Lake when she was campaigning. People were very concerned about seeing their Lake disappear. It was a controversial issue. Having it restored only to have runoff coming from a transit center or parking garage was also a concern. Those were things that came to her mind. It sounded like a good deal, but the City was not even there yet in terms of what it planned to do with that waterway.

**Ms. Shepard**, 2136 SE Lake Road, Milwaukie. She commented on Ms. Herrigel's proposal. Living on Kellogg Lake she was torn between a lake and a creek. She suggested or asked that if the City went forward with the purchase of that property that there be a deed restriction that would prevent the City at some point in time from developing it other than the intent of the purchase right now which was to keep it as a buffer if it was restored to a creek.

**Mayor Bernard** had some experience with flood plains, and he did not believe there was a chance that anyone could build or fill on that Lake or in the wetlands. He lived

along the creek his entire life, and it flooded beyond Oatfield. He agreed there should be something in the deed that restricted development of that site. He and residents along Kellogg Creek were enthusiastic about potentially restoring salmon runs.

**It was moved by Mayor Bernard and seconded by Councilor Barnes to approve the resolution authorizing the City Manager to sign a “Request for Transfer of Title to Property” with Clackamas County for Tax Lot 11E36CB03200.**

**Councilor Collette** added the only acceptable development she would consider would be park related such as walkways or small interpretive center.

**Councilor Stone** asked if there needed to be any reference to Ms. Shepard’s suggestion regarding development.

**Mr. Swanson** thought the only thing the County would transfer was a quitclaim deed. It would not be anything fancy. The City could consider doing it once it took title. The County was not likely to start putting restrictions on deeds because it probably handled hundreds of them. He doubted the County would be interested.

**Mayor Bernard** wanted to ensure that a future Council would not develop the property.

**Councilor Collette** said once it was designated a wetland, it would be illegal to develop on it.

**Motion passed 3 – 1 with the following vote: Councilor Barnes and Collette and Mayor Bernard voting ‘aye’ and Councilor Stone voting ‘no.’**

**RESOLUTION NO. 42- 2005:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A “REQUEST FOR TRANSFER OF TITLE TO PROPERTY” WITH CLACKAMAS COUNTY FOR LOT 11E36CB03200**

**B. Tourism Action Plan Implementation**

**Ms. Herrigel** requested that the City Council approve a resolution authorizing the North Clackamas Chamber of Commerce to administer \$30,000 in funds and approve up to \$20,000 in appropriations for tourism-related activities. In 2003, the City adopted a Tourism Action Plan, which was recently updated. There was approximately \$30,000 available to each jurisdiction that had a tourism action plan. Community Service staff would work closely with the Chamber to review any potential expenditures and tasks. The types of things she would include as tasks were an Adopt-a-Bowtie program, downtown hanging flower baskets, and advertisements for various events held throughout the year. If the City Council approved the resolution, she would work with the Tourism Development Council to transfer those ideas into an action plan to ensure they would be funded.

**Mayor Bernard** would abstain after making several comments. He did not hear about anything about Farmers’ Market banners, which he paid for over the years, and the Market paid for banner installation. He abstained because he was on the Chamber Board and was its treasurer.

**Councilor Collette** shared the Mayor's concerns about flags and banners and hoped that money could be spent on those items.

**Ms. Herrigel** said there was one bullet item dedicated to the Farmers' Market that she would be fleshed out.

**Councilor Stone** asked how much money was left in the old Milwaukie Downtown Development Association (MDDA) fund for the flower baskets.

**Mr. Swanson** believed it was minimal.

**Councilor Stone** noted the baskets were beautiful and asked if they were being done by a Milwaukie florist.

**Ms. Herrigel** was still gathering that information and understood the bulk of the expense was for keeping the baskets watered during the summer.

**Councilor Stone** wondered if there was anyone in Milwaukie that would be interested.

**Ms. Herrigel** said if the City pursued that, then it would get quotes from several businesses. It was not only an issue of finding the baskets but also of watering them.

**Councilor Collette** asked if there was water to the bowties and noted she would like them called something else.

**Ms. Herrigel** replied there was no water available in the right-of-way.

**Councilor Stone** suggested the Neighborhood Associations might be interested in helping.

**It was moved by Councilor Collette and seconded by Councilor Stone to approve the resolution authorizing the North Clackamas Chamber of Commerce to administer \$30,000 in Tourism Action Plan funds from the Clackamas County Tourism Development Council for the City of Milwaukie and approving up to \$20,000 in appropriations in fiscal year 2005/2006 for Tourism-related activities.**

**Councilor Barnes** thanked those who had volunteered their time to come up with this proposal.

**Motion passed 3:0:1 with the following vote: Councilors Barnes, Collette, and Stone voting 'aye' and Mayor Bernard abstaining.**

**RESOLUTION NO. 43-2005:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE NORTH CLACKAMAS CHAMBER OF COMMERCE TO ADMINISTER A \$30,000 TOURISM ACTION PLAN GRANT FROM THE CLACKAMAS COUNTY TOURISM DEVELOPMENT COUNCIL (TDC) AND FURTHER AUTHORIZING THE EXPENDITURE OF \$20,000 IN MATERIALS AND SUPPLIES IN THE CITY'S FY 06 BUDGET TO ALLOW CITY STAFF TO COMPLETE THE PROPOSED TOURISM RELATED ACTIVITIES.**

**C. Items Pulled from the Consent Agenda for Discussion**

**Single Source Vendor Purchase, Kimber Firearms – Resolution**

**Councilor Stone** commented she should have e-mailed but at the last minute realized she had some questions. She asked if Milwaukie police officers typically bought their own handguns. Did the City ever issue them in the past? Was it typical for this size of department to standardize and issue firearms?

**Chief Kanzler** said it had become a standard nationally in agencies of all sizes. The agency he served with prior to coming to Milwaukie had eight sworn officers, and the department issued the weapons. They were purchased by the city and issued by the department to the officers. It was not the size of the agency but the liability.

**Councilor Stone** asked if there had been a problem with the liability. She knew there was a recent incident where an officer did discharge his weapon. Was there some issue with liability the City Council should know about?

**Chief Kanzler** said when the department did not have control over the equipment that the officers were using – in other words it did not issue it or maintain it or control it – then the department relied on the officers' good, common sense to do things properly. It was not like target shooting. If the officer had to use deadly force, then he was likely to be killed or kill someone else. That was the only time the weapon was used. One wanted to ensure the weapon went off when the trigger was pulled and that it functioned properly and was well aimed. If standards were not set for equipment, then there could be a variety of outcomes. If one did not set standards for specific medical equipment, for example, then there could be a variety of outcomes. This was the same type of situation. The liability here was not only his because he failed to provide adequate supervision over equipment that was issued and used in the department. It also became the City Council's liability. The department had been lucky. The weapons purchased and used by the officers over the years in Milwaukie have performed appropriately. There had been some malfunctions on the pistol range. The weapons were manmade, so there were no guarantees that they were going to work all the time. If the City purchased it, maintained it, and controlled all aspects of the weapon and the ammunition going into the weapon, then based on best practices, the department could have a better expectation of the results.

**Councilor Stone** asked if the department did have standards in place in terms of monitoring the officers when they used deadly force. It was not like the department did not have standards in place.

**Chief Kanzler** said there were standards in place but not over the firearms because the officers bought their own firearms.

**Councilor Stone** was wondering because the City never had to do that before, so she wondered if there was an incident that prompted this. It was a good chunk of change; it was \$56,000.

**Chief Kanzler** said the full amount was about \$75,000.

**Mr. Swanson** said two or three years ago, the Council added an assessment to traffic and municipal court fines that was to be used for police training and equipment purchases. It was proposed that monies from those assessments be used to purchase the firearms. He was more concerned about the liability the City had to provide the best it could to the people out there doing that work. He thought that often jurisdictions got

into trouble because they did not require enough training. The reason it took so long to get a new officer on the street was because he or she was only put on the street after being well trained and ready to respond. In the same way, yes these were expensive firearms, but they were the best the City could find. He wanted to make sure when those people were out there that they were adequately equipped to ensure their safety. One thing that ensured their safety in regards to firearms was the use. They had to go out to the range and shoot. Right now the City provided ammunition for a range of weapons. This would allow the department to standardize and hopefully see a long-term lower cost by buying in quantity. This was money in the general fund, but it was narrowly designated money for equipment and training. In this case, the department proposed using the funds for the equipment side of the equation.

**Councilor Stone** had a question about the study done at the Tacoma police department. Was that like a reliability study of both the Glock and Kimber weapons? Please explain.

**Chief Kanzler** replied it was a study of about 14 different weapons that looked at performance in combat scenarios, how they fit the person's hand, the reliability of going off when the trigger was pulled, the safety features, and tactical deployment and redeployment. The results were published by the Tacoma police department as a national testing standard. The Milwaukie police department studied that standard and tried to validate the findings with its personnel. They were able to validate the Tacoma findings. The department tried a variety of different weapons over the past six months in different training scenarios to ensure the weapons fit the person properly and went off when the trigger was pulled. It was the highest quality the department could come up with.

**Councilor Stone** understood the \$56,000 was the first phase. How many weapons would that be?

**Chief Kanzler** budgeted \$75,000, which was the amount of money available to him through the traffic assessment. That would equip the entire department.

**Councilor Stone** asked if that was the ammunition and everything.

**Chief Kanzler** replied that was just the weapons.

**Councilor Stone** asked how much they were. She went online and checked them out – the Kimbers looked like a top of the line firearm. How much were they?

**Chief Kanzler** said new hires typically bought the most economical weapon possible when they got on the job. Individuals did not go through the testing standards as the department had to determine the best weapon. The weapon system was a holster, light assembly, ammunition pouches, and magazines which costs about \$1,200.

**Councilor Stone** asked if the City would get a discount.

**Chief Kanzler** replied by buying directly from the manufacturer, the City did not have to pay federal excise tax. The purchase was through the established distributor in Milwaukie.

**Councilor Stone** asked how many officers carried a backup handgun.

**Chief Kanzler** replied about 30%.

**CITY COUNCIL REGULAR SESSION – SEPTEMBER 6, 2005**

**DRAFT MINUTES**

**Page 11 of 13**

**Councilor Barnes** trusted Chief Kanzler's judgment and did not want to micromanage his decisions. The department did its homework. Chief Kanzler was chosen to be the chief for a reason. She thanked him tremendously on behalf of the rest of the Council.

**It was moved by Mayor Bernard and seconded by Councilor Collette to buy single-source vendor purchase Kimber Firearms.**

**Councilor Collette** agreed with Councilor Barnes. She spoke with Chief Kanzler at some length about the research that was conducted in order to select these weapons, and she trusted the Chief and the police force to select the appropriate weapons for the officers on the street. She had nothing but respect for Chief Kanzler and the department.

**Councilor Stone** got the feeling that people thought that her questions were not appropriate. She just wanted information and thanked Chief Kanzler for sharing it. Officers needed to be well protected. If she were an officer she would spend the money to get the best handgun she could afford. It was great the department was doing this and giving the officers top of the line equipment. It was certainly not something she was against. She thought the City needed to ensure that the officers had the proper weapons and that they could do their jobs.

**Motion passed unanimously among the members present. [4:0]**

#### **RESOLUTION NO. 44-2005**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CHIEF OF POLICE TO PURCHASE FIREARMS FROM SINGLE SOURCE PROVIDERS KIMBER AND GLOCK FIREARMS THROUGH THEIR AUTHORIZED REPRESENTATIVES NORTHWEST ARMORY AND KEITH'S SPORTING GOODS.**

**Mayor Bernard** remarked this item was on the consent agenda and Council members were asked prior to the meeting if they wished to pull anything for discussion. He did not believe the public needed to know all that information. He trusted the Chief's decision. He would have talked to the Chief or e-mailed him if he had a question.

**Councilor Stone** had responded that she did not wish to pull anything, but at the last minute, she decided to ask that question.

**Mayor Bernard** thought she could have done a better job and not wasted time. He was on the committee as a citizen years ago that hired the Chief. After sitting on that committee, Mayor Bernard knew he was the person for the job, and he had done a fantastic job since that day. If the Chief said the officers needed a certain gun, then that was what they needed.

#### **Council Reports**

- **Councilor Barnes** attended the Sunrise Corridor Kickoff. The Economic Development Committee meeting was set for September 22.
- **Mayor Bernard** announced that Oregon State University (OSU) would be at the upcoming Farmers' Market to conduct a survey. He discussed approaching the Port



of Portland regarding grants to help get commercial businesses going on the Milwaukie riverfront. He also attended the Sunrise Corridor opening and commented that it dumped right onto Hwy 224. He was very concerned about possible impacts.

- **Councilor Collette** and her “little downtown team” were continuing to look at what kind of things needed to be developed in order to bring people into downtown Milwaukie. She met with the President of Clackamas Community College and others and mentioned in passing about coordinating with Dark Horse and developing a curriculum around comic books and animation.
- **Councilor Stone** asked for clarification of the City Council coffees and when they might be resumed. She was not able to make the sessions because she often worked on weekends, so she suggested quarterly coffees. The group said they would discuss this further when Councilor Loomis was present.

**Mr. Swanson** discussed Hurricane Katrina relief and the links provided on the City website. The group discussed lawful expenditures by the City and the feasibility of having a money donation box at the Farmers’ Market. Councilor Barnes suggested that the City sponsor a Red Cross blood drive.

**Les Poole**, 15115 SE Lee, Milwaukie, 97267. He suggested a giving kettle at the Farmers’ Market or home football games.

#### **ADJOURNMENT**

**It was moved by Councilor Barnes and seconded by Councilor Collette to adjourn the meeting. Motion passed unanimously among those present. [4:0]**

**Mayor Bernard** adjourned the regular session at 8:16 p.m.

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Pat DuVal, Recorder



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Kenny Asher, Community Development and Public Works Director**

**From: Brenda Schleining, Associate Engineer**  
**Paul Shirey, Engineering Director**

**Subject: 42<sup>nd</sup> Avenue Sidewalk and Storm Improvement Project Award for Engineering Services Project #0063**

**Date: September 16, 2005 for October 4, 2005 City Council Meeting**

### **Action Requested**

Authorize the City Manager to sign a contract for design services for the 42<sup>nd</sup> Avenue Sidewalk and Storm Improvement Project with Hopper Dennis Jellison, in the amount of \$45,760. This amount includes a 10% project contingency.

### **Background**

The 42<sup>nd</sup> Avenue Sidewalk and storm improvement project will construct curbs and sidewalks on both sides of 42<sup>nd</sup> Ave., from Johnson Creek Blvd. to Olsen Street, along with a storm drainage system. The project is identified in the Capital Improvements Plan (CIP). This project will correct the following problems:

- Improve pedestrian safety by adding sidewalks.
- Improve storm water drainage.
- Install manholes and catch basins that are necessary for proper storm maintenance.

The City received four proposals to provide engineering, survey and, property acquisition services. The proposals were evaluated based on the qualifications of the firm and project team, project approach, project understanding, timeframe, and cost.

Engineering plans to create a street design that will preserve the large trees along the 42<sup>nd</sup> Avenue project. Every effort will be made to preserve the health of the trees throughout the project.

### **Fiscal Impact**

The engineering firms who submitted proposals and the total proposed fees are:

<b>Contractor</b>	<b>Fee (does not include 10% contingency)</b>
Hopper Dennis Jellison	<b>\$41,600</b>
Lee – Pace Engineers	<b>\$33,182</b>
LDH design group	<b>\$45,705</b>
Century West	<b>\$43,850</b>

The total budgeted amount for the 42<sup>nd</sup> Avenue sidewalk and storm project is \$270,000 (engineering and construction). Engineering services typically cost 10-20% of the total project cost, which is approximately \$27-\$54 K. The engineering fee of \$45,760 is within the budgeted amount.

The decision to award to Hopper Dennis Jellison is based on the following criteria: previous experience with similar projects, expertise of staff, understanding the project challenges and cost of services. Lee Engineers was not chosen because their key staff person resigned from the company during the selection process, and a second key staff person indicated he was also going to resign from this company in the near future.

### **Work Load Impacts**

This project is included in the work plan for Engineering for this fiscal year.

### **Alternatives**

1. Authorize the City Manager to approve the personal services contract.  
Pro Work can progress as scheduled.  
Con Work will not get done on schedule.
2. Elect to defer the project to a later date.  
Pro May get a lower price for engineering.  
Con Could lose the time-dependent grant.
3. Take no action.  
Pro Workload will be reduced.  
Con Project money may be re-appropriated.

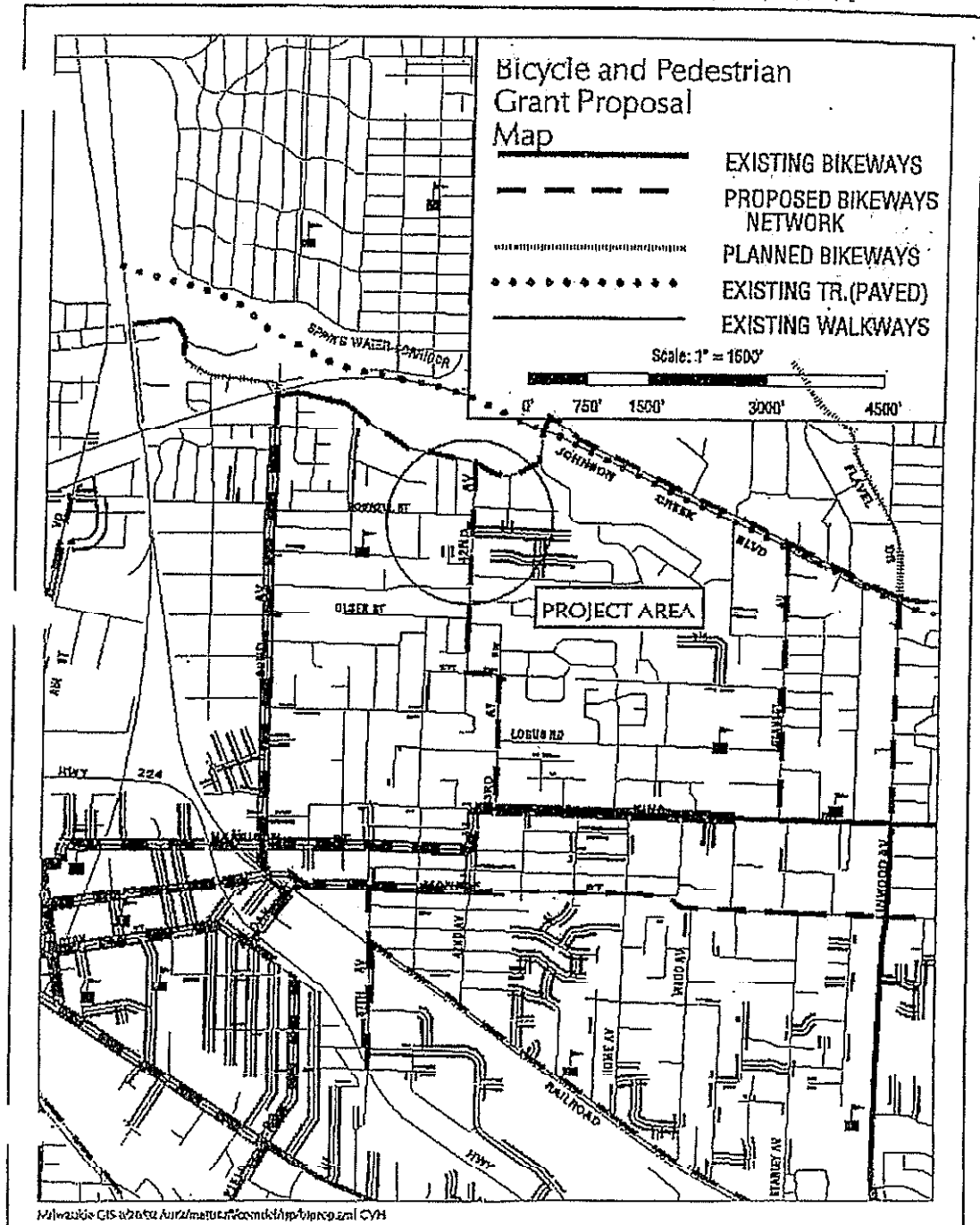
### **Attachments**

1. Site Map

# ATTACHMENT 1

Misc. Contracts and Agreements  
No. 22280

Exhibit "A"





**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Kenny Asher, Community Development/Public Works Director**

**From: Paul Shirey, Engineering Director**

**Subject: Amendment to IGA with County Service District for Clearwater Plan Implementation**

**Date: September 16, 2005 for October 4, 2005 City Council MEETING**

### **Action Requested**

Amend an IGA between the Clackamas County Service District #1 (District) and the City of Milwaukie (City) for implementation of the Clearwater plan to consolidate wastewater treatment services in north Clackamas County.

### **Background**

On August 2, 2005, Council approved an IGA with the District to implement the Clearwater plan. The IGA (attached) included, among other things, language regarding the cost of wastewater treatment services that the City would start to pay to the District beginning in July 2006. Original language in paragraph B, section 3 implied that the City would enjoy a fixed rate for treatment services not to exceed \$13 per month per EDU (equivalent dwelling unit), in perpetuity. In fact, the intent was to limit only the first year's (July '06- June '07) rate to no more than \$13.

Amendment to the IGA, paragraph B, Section 3 is shown in underline:

In consideration of receiving wastewater transmission and treatment services, City agrees to pay Clackamas County Service District No. 1 a wholesale wastewater treatment and transmission rate at the amount per equivalent dwelling unit, not to exceed \$13 per EDU/month for the July 1, 2006 through June 30, 2007 fiscal year. The wholesale rate will begin on July 1, 2006 and

replace the "Unit Charge" currently used from a 1970 agreement. Future wholesale rates will be considered by the Districts only after a review of the rates by the Clearwater Advisory Committee.

The City of Milwaukie is a member of the Clearwater Advisory Committee.

### **Concurrence**

The City Manager, City Attorney, and the Community Development/Public Works Director agree with the substance and language of the change. All agree that the intent of the IGA as approved on August 2, 2005 was to stipulate a maximum rate per EDU for wastewater treatment services for one fiscal year only.

### **Fiscal Impact**

None. It was originally anticipated that wastewater treatment rates after fiscal year 06/07 would be subject to possible increases.

### **Work Load Impacts**

None.

### **Alternatives**

1. Approve the amendment to the IGA as requested.
  - This will insure that the Clearwater plan can be implemented as approved by the County Commissioners.
2. Approve other changes to the IGA.
  - Further changes would require opening negotiations with the County.
3. Do not approve the changes proposed.
  - This would jeopardize the Clearwater Plan implementation and require renegotiation with the County.

### **Attachments**

Intergovernmental Agreement, *as amended*, between the Clackamas County Service District #1 (District) and the City of Milwaukie (City) for implementation of the Clearwater plan

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY SERVICE DISTRICT #1, TRI CITY SERVICE DISTRICT  
AND  
CITY OF MILWAUKIE  
FOR  
REGIONALIZED WASTEWATER TREATMENT SERVICES**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, between Clackamas County Service District No. 1 and Tri City Service District (hereinafter Districts), county service districts organized under ORS Chapter 451, and the City of Milwaukie, (hereinafter "City"), a municipal corporation of the State of Oregon, all being political subdivisions of the State of Oregon.

**RECITALS:**

1. Clackamas County Service District No. 1 and Tri City Service District are county service districts organized under ORS Chapter 451. The City of Milwaukie is an Oregon municipal corporation, organized and existing under its municipal charter, ordinances and the laws of the State of Oregon.
2. Oregon Revised Statutes, Chapter 190, authorizes units of local government to enter into intergovernmental agreements for the performance of their duties or for the exercise of powers conferred upon them.
3. Districts own, operate, and maintain sanitary sewer collection, transmission, and treatment systems including the Kellogg Creek Water Pollution Control Plant and the Tri-City Water Pollution Control Plant.
4. City owns, operates, and maintains a sanitary sewer collection system, including pump stations and purchases wastewater treatment services from Clackamas County Service District No. 1.
5. Districts, performed a Regional Wastewater Treatment Option study to determine the best long-term solution for providing wastewater treatment services in the north Clackamas County area including the cities of Gladstone, Milwaukie, Oregon City, West Linn, Happy Valley and Johnson City.
6. The Regional Wastewater Treatment Option study determined that regionalization of wastewater treatment at a single facility provides the most cost-effective and environmentally sound long-term solution for wastewater treatment in the region. Milwaukie staff and citizens participated in the study and public outreach process.
7. Water Environment Services, administrator of the Districts, has developed an implementation plan for regionalization of wastewater treatment services at a new facility, named the Clearwater Facility, to be located on the site of the existing Tri-City Water Pollution Control Plant.
8. Districts and City recognize the relocation of treatment capacity from the Kellogg Creek facility to the Clearwater site will enable the decommissioning and

redevelopment of the Kellogg Creek facility, and that such redevelopment is an essential feature of City's participation in the regionalization plan.

9. Districts and City agree that implementing the Clearwater Plan will promote efficiency and effectiveness in service delivery, and provide opportunities to maximize the highest and best use of land, construct community amenities, and improve environmental protection.

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

Section 1: Clearwater Project.

- A. Districts and City agree to support implementation of the Clearwater Project.
- B. Districts and City agree that the Clearwater Advisory Committee shall be formed to perform those functions as are prescribed by its bylaws, attached hereto as Exhibit A and incorporated herein by reference.
- C. Districts will perform those actions necessary to consolidate wastewater treatment at the new Clearwater Facility located at the site presently occupied by the Tri-City Water Pollution Control Facility, including but not limited to:
  - 1) Planning and Engineering
  - 2) Environmental Permitting
  - 3) Land Use Permitting Application
  - 4) Contract Bidding
  - 5) Construction Management
  - 6) Financing
- D. Districts agree to begin the process of implementation of the Clearwater Plan no later than September 1, 2005.

Section 2: Schedule.

- A. Districts agree to begin negotiations with the Oregon Department of Environmental Quality for authority to move the Kellogg Creek Water Pollution Control Facility discharge point and secure a new discharge permit for the Clearwater Facility, subject to the provisions of Section 4.
- B. Districts agree to begin negotiating agreement with the City of Oregon City for land use authority to develop the Clearwater Facility to the extent necessary to achieve the goals of a long-term solution for wastewater treatment services in the north Clackamas County area covered by the Regional Wastewater Treatment Options Study, subject to the provisions of Section 4.



- C. Districts agree to begin design of the Clearwater Project transmission system to accommodate the development of the Trolley Trail, Phase I, by September 30, 2005, subject to the provisions of Section 4.
- D. Districts agree to begin construction of the Clearwater Project transmission system to accommodate the development of the Trolley Trail, Phase I, not later than July 1, 2006, subject to the provisions of Section 4.
- E. Districts agree to begin design for expansion of the Tri-City Water Pollution Control Plant into the Clearwater Facility by July 1, 2006 subject to the provisions of Section 4.
- F. Districts agree to construct the Clearwater Facility as quickly as practicable in accordance with the schedule in Clearwater Implementation Plan, all factors considered and subject to the provisions of Section 4. Districts estimate completion of the first phase of the Clearwater Facility and transmission system by end of calendar year 2010.
- G. Districts agree to decommission the Kellogg Creek Water Pollution Control Plant as quickly as practicable in accordance with the schedule in Clearwater Implementation Plan, all factors considered and subject to the provisions of Section 4. Districts estimate decommissioning the Kellogg Creek Water Pollution Control Plant by end of calendar year 2010.
- H. Clackamas County Service District No. 1 agrees to transfer ownership of the property on which the Kellogg Creek Water Pollution Control Facility is sited, except for the raw sewage pump station and necessary road access, to the City following decommissioning, demolition and remediation of any environmental contaminants or hazards discovered on the site after structures are removed by the end of calendar year 2012. CCSD No. 1 agrees to cooperate with the City as to possible relocation or modification of the pump station in connection with the redevelopment of the property.
- I. If City chooses to market the property for private development, it will market said property at fair market value. The City will pay CCSD No. 1 two thirds of the proceeds from the sale of the property. If the City chooses to hold the property for more than five years, City of Milwaukie agrees to compensate Clackamas County Service District No. 1 or its successor in an amount equal to two thirds of the fair market value of said property as determined by an independent appraisal, of which the costs will be shared equally by CCSD No. 1 and the City.

Proceeds from the sale of the property to would be distributed at closing of the property sale to a private party, or no later than five years after the property is transferred to City.

Section 3: Payments and Other Consideration.

- A. City agrees to pay to Clackamas County Service District No. 1 a one-time payment of \$4,500,000 toward the capital costs for the Clearwater project, payable as follows: The first payment of \$450,000 is due when the trolley trail pipeline starts construction. The second payment of \$1,800,000 is due when facilities that will replace the Kellogg Plant's capacity begins construction, and the final payment of \$2,250,000 is due when the Kellogg Plant is decommissioned (i.e. taken out of service).
- B. In consideration of receiving wastewater transmission and treatment services, City agrees to pay Clackamas County Service District No. 1 a wholesale wastewater treatment and transmission rate at the amount per equivalent dwelling unit, not to exceed \$13 per EDU/month for the July 1, 2006 through June 30, 2007 fiscal year. The wholesale rate will begin on July 1, 2006 and replace the "Unit Charge" currently used from a 1970 agreement. Future wholesale rates will be considered by the Districts only after a review of the rates by the Clearwater Advisory Committee.
- C. City agrees to collect and on behalf of the District, a new Transmission and Treatment System Development Charge, as adopted by Clackamas County Service District No. 1, for each new Equivalent Dwelling Unit added to the system beginning on July 1, 2006. The rate for this charge will be based on the District's cost of expanding capacity at the Tri-City site and will be subject to review and comment by the Clearwater Advisory Committee before adoption
- D. In consideration of the terms and conditions of this agreement, City shall have one seat on the Clearwater Advisory Committee and shall be entitled to all rights and privileges as set forth in the attached Draft Clearwater Advisory Committee By-Laws dated April 30, 2005, and afforded all other participants on the Committee.

Section 4: Contingencies

The terms and conditions of this intergovernmental agreement are subject to approval of all necessary applications and permits, including but not limited to, a National Pollutant Discharge Elimination System permit issued by U. S. Environmental Protection Agency and Oregon Department of Environmental Quality, Master Plan and facility design approvals from the Oregon Department of Environmental Quality, land use approval by the City of Oregon City, and building permits by the City or Oregon City.

Section 5: Effective Date.

The effective date of this agreement shall be the date the last party executes the agreement, unless so specified otherwise by written amendment hereto.

Section 6: Term of Agreement.

The term of this agreement shall be ten years from the date specified in Section 5, or when all obligations of the parties as specified herein have been fulfilled, whichever occurs later.

Section 7: Termination.

- A. Except as otherwise provided in this Section, this agreement may be terminated only by the inability of Districts to procure the necessary permits and authorizations essential to siting, constructing, operating, and maintaining the Clearwater Facility and appurtenant facilities.
- B. In the event other jurisdictions on whose participation the Clearwater Project is dependent elect not to participate, this agreement shall be terminated without cost or obligation to either party.
- C. By mutual agreement of the parties.

Section 8: Amendment.

This agreement may be amended by the joint agreement of the parties. To be effective, all amendments shall be in writing and signed by authorized representatives of each party.

Section 9: Indemnification.

- A. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, (ORS 30.260 to 30.300) the City of Milwaukie shall hold harmless and indemnify the Districts, their Commissioners, employees, agents, and volunteers against any and all claims, damages, losses and expenses (including all attorney(s) fees and costs), arising out of, or resulting from the City of Milwaukie's performance of this agreement when the loss or claim is attributable to the acts or omissions of the City of Milwaukie, its City Councilors, employees, agents, and volunteers.
- B. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, (ORS 30.260 to 30.300) the Districts shall hold harmless and indemnify the City of Milwaukie, its Councilors, employees, agents and volunteers against all claims, damages, losses and expenses (including all attorney fees and costs) arising out of or resulting from the District's performance of this agreement when the loss or claim is attributable to the acts or omissions of the Districts, their Commissioners, employees, agents, and volunteers.

Section 10: Attorney Fees.

If suit or action is instituted in connection with any controversy arising out of this agreement, the prevailing party shall be entitled to recover in addition to costs such sums as the court may adjudge reasonable as attorney fees at trial, on petition for review and on appeal.

Section 11: Notices.

Any notice required or permitted under this agreement shall be given when actually delivered or seventy-two (72) hours after deposited in the United States mail, first class postage, return receipt requested, and addressed as follows:

Districts: Director  
Water Environment Services  
9101 SE Sunnybrook Boulevard, Suite 441  
Clackamas, Oregon 97015

City: City Manager  
City of Milwaukie  
10722 SE Main Street  
Milwaukie, Oregon 97022

Section 12: Severability.

City and the Districts agree that if any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

Section 13: Disputes

- A. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by any party to substantially perform any provision of this agreement shall constitute default. In the event of an alleged default or breach of any term or condition of this agreement, the party alleging such default or breach shall give the other party not less than 30 days notice in writing specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, the party in charge shall not be considered in default for purposes of termination or instituting legal proceedings.
- B. The parties shall first attempt to resolve the dispute by negotiation, followed by mediation, if negotiation fails to resolve the dispute.

Step One: (Negotiation)

The City Manager and director or other persons designated by each of the disputing parties will negotiate on behalf of the entities they represent and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each Manager and ratified by the governing bodies which shall be binding upon the parties.

Step Two: (Mediation)

If the dispute cannot be resolved within thirty (30) days at Step One, the parties shall submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The parties will again attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each party shall select on (1) name. The two selected shall select a third person. The dispute shall be heard by a panel of three (3) mediators and any common costs of mediation shall be borne equally by the parties who shall each bear their own costs and fees therefore. If the issue is resolved at this step, a written determination of such resolution shall be signed by each manager and approved by the governing bodies.

Step Three: (Legal Action)

After exhaustion of the preceding processes, if the parties agree, any dispute or claim shall be settled by arbitration under the jurisdiction of the circuit Court of the State of Oregon for Clackamas County pursuant to ORS Chapter 36 or by arbitration provided by the Department of Land Conservation and Development. In the absence of such an agreement, that same court shall have jurisdiction.

IN WITNESS THEREOF, the respective parties have cause to be signed in their behalf to make and enter into this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF MILWAUKIE

TRI-CITY  
SERVICE DISTRICT

\_\_\_\_\_  
By: James Bernard  
Mayor

\_\_\_\_\_  
By: Martha Schrader, Chair  
Board of County Commissioners

ATTEST:

By: \_\_\_\_\_  
Pat Duval  
City Recorder

ATTEST:

By: \_\_\_\_\_

CLACKAMAS COUNTY  
SERVICE DISTRICT #1

\_\_\_\_\_  
By: Martha Schrader, Chair  
Board of County Commissioners

ATTEST:

By: \_\_\_\_\_



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager  
Kenny Asher, CD/PW Director**

**From: Paul Shirey, Engineering Director  
Kelly Somers, PW Operations Director**

**Subject: Award Contract for the North Main Wastewater Improvement  
Project and Transfer Funds For the Project**

**Date: September 19, 2005 for October 4, 2005 Council Meeting**

### **Action Requested**

Authorize the City Manager to sign a contract with GSE Inc., in the amount of \$33,989 plus a 10% contingency for the North Main Wastewater Improvement Project.

Approve a resolution to transfer \$40,000 from the Wastewater Contingency Fund to the Wastewater Capital Outlay Fund to fund the project.

### **Background**

The City of Milwaukie entered into an agreement with the developer of the North Main Village that, among other things, obligates the City to fund and construct off-site utility connections to serve the proposed mixed-use development located on the former Safeway site in downtown Milwaukie.

The utility line to be constructed under this contract is located within the right-of-way of Main Street, on the west side of the project.

The City received three bids for this project. The low bidder was GSE Inc. in the amount of \$33,989. The second bid for the project was received from Moore Underground Inc. in the amount of \$40,665 and the third bid was from Westech Construction Inc. in the amount of \$43,896. The engineer's estimate for this project was \$33,530.

A 10% contingency will be added to the low bid price plus \$2500 for project inspection fees. This brings the total cost of the project, including the 10% contingency and inspection fees, up to \$40,000.

A transfer of funds from the Wastewater Contingency Fund to the Capital Outlay Fund of the 2005/2006 Wastewater Budget is necessary to fund the project and Council approval of the attached resolution is recommended.

The Operations Department, with assistance from Engineering, will manage the construction phase of the project.

### **Concurrence**

The City Manager, CD/PW Director, Engineering Director, and Public Works Operations Director all concur that this project needs to be accomplished to complete our obligation to the developer of the North Main Village Project.

### **Fiscal Impact**

The project was not funded in the FY 05/06 budget because it was originally intended to be part of the developers responsibility. Currently, the Wastewater Contingency Fund has \$689,985 available. It is estimated that the project, including a 10% contingency and inspection fees will not exceed \$40,000. This will leave a balance in the Wastewater Contingency Fund of \$649,985.

### **Work Load Impacts**

Management of the design and bidding process is included in the work plan for all departments involved in the project. The construction process will require time from Engineering and Public Works Operations Departments and is included in the work plans for this year. A part-time on-site inspector will be retained to provide inspection services.

### **Alternatives**

1. Approve the contract award and funding resolution with modifications.
  - This will allow the N. Main project to move ahead as planned.
2. Defer the decision.
  - Deferral of this request will delay the contractor's start of construction and would jeopardize the bid.
3. Deny the request to award the contract and funding resolution.
  - Failure to award the contract will mean the city would need to re-bid the project at a later date and would potentially jeopardize the feasibility of the North Main project.

### **Attachment**

A. Resolution



**ATTACHMENT “A”**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE,  
OREGON, APPROVING A TRANSFER OF FUNDS.**

**WHEREAS**, expansion of the wastewater line in Main Street was not budgeted in the 2005/2006 fiscal year budget; and

**WHEREAS**, construction of the wastewater line is needed for development of the North Main Village Project; and

**WHEREAS**, Oregon Local Budget Law allows a governing body to transfer appropriation authority by passing a resolution or ordinance (ORS 294.450(1&(3)).

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Milwaukie:

The transfer of appropriation in the Wastewater fund is hereby approved as follows:

From:	To:
Contingency	Capital Outlays
\$40,000.00	\$40,000.00

Introduced and adopted by the City Council on October 4, 2005. This resolution is effective upon passage.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, & Corrigan, LLP

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney